

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

ORIGINAL

WALTERS GARDENS, INC.,)	
)	
Opposer.)	OPPOSITION NO.: 91153755
)	
vs.)	
)	
PRIDE OF PLACE PLANTS,)	Mark: PIILU
INC.,)	Serial No.: 76,201,447
)	Filed: January 29, 2001
Applicant.)	
_____)	

AFFIDAVIT OF DEPONENT

I, **CHRISTOPHER MICHAEL HANSEN**, HAVE READ THE TRANSCRIPT OF THE DEPOSITION WHICH WAS GIVEN BY ME IN THE ABOVE-CAPTIONED CASE ON AUGUST 19, 2004. I WOULD LIKE TO CORRECT, ADD, AND/OR CHANGE THE FOLLOWING:

PAGE	LINE	CORRECTION
<u>2</u>		<u>Also Attending: Karen Jenks (not Park Jennings)</u>
<u>35</u>	<u>7</u>	<u>Change "Walters" to "Wayside"</u>
<u>63</u>	<u>17</u>	<u>Change "Jennings" to "Jenks"</u>
<u>72</u>	<u>18</u>	<u>Change "symbol" to "simple"</u>
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REPORTER: ANN HARLAN

SIGNATURE: _____

CHRISTOPHER MICHAEL HANSEN

SWORN TO BEFORE ME THIS 20th DAY
OF September, 2004.

Chp P. Barrett
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 9-3-2012

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PRIDE OF PLACE PLANTS, INC.,

Serial No.: 76,201,447

Applicant.

Filed: January 29, 2001

ORIGINAL

DEPOSITION OF BREWSTER ROGERSON

Taken in behalf of the Opposer

August 27, 2004

* * *

1 BE IT REMEMBERED THAT the deposition of BREWSTER
2 ROGERSON was taken before Deelana Johnson, CSR No.
3 90-0104, on Friday, August 27, 2004, commencing at
4 the hour of 9:15 a.m., the proceedings being reported
5 at 3009 N.W. Overlook Dr., Hillsboro, Oregon.

6
7
8
9
10 APPEARANCES

11
12 MILLER, JOHNSON, SNELL & CUMMISKEY

13 By Mr. Barry C. Kane

14 Appearing in behalf of the Opposer

15 (Appearing telephonically)
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* * *

1 BREWSTER ROGERSON,
2 having first been duly sworn, testified under
3 oath as follows:

4 THE WITNESS: I do.

5
6 EXAMINATION BY MR. KANE:

7 Q. Good morning, Mr. Rogerson.

8 A. Good morning.

9 Q. Thank you for taking the time to meet with us
10 this morning. I greatly appreciate it.

11 A. Can you hear me well enough?

12 Q. Yes, I can. Thank you.

13 A. Good.

14 Q. Mr. Rogerson, will you please state your full
15 name and address for the record.

16 A. The name is Brewster Rogerson. The address is
17 3093 Northwest Overlook Drive, Apartment 424,
18 Hillsboro, Oregon 97124.

19 Q. Mr. Rogerson, do you have a middle initial or
20 middle name?

21 A. I was born with a first name, which I have not
22 used for about 50 years. That was Livingston.

23 Q. I see. Thank you. Mr. Rogerson, speaking of
24 your birth, when were you born?

25 A. I was born on January 16, 1921.

1 Q. Have you ever had your deposition taken before,
2 Mr. Rogerson?

3 A. Years and years ago, in a court case in Oakland,
4 California. It was a sanity hearing for a
5 student.

6 Q. I see. Well, if I may, Mr. Rogerson, just to
7 sort of refresh your memory, this testimony is
8 being recorded by the court reporter there
9 adjacent to you, using a stenographic method.
10 And so she is recording my questions and she will
11 be recording your answers. So she will require
12 an oral response from you, either in the form of
13 a yes or a no or some narrative.

14 Simply nodding of the head or shaking of the
15 head or physical gestures, she can't record those
16 officially other than indicating that you have
17 nodded your head, but it doesn't indicate
18 precisely what was the nature of the response.
19 So an oral response would be appreciated.

20 A. I understand.

21 Q. Great. Well, Mr. Rogerson, you were born in
22 1921.

23 A. Correct.

24 Q. I assume that you're retired.

25 A. I have been retired for 21 years.

1 Q. The pauses that you'll hear, you know, between
2 the questions are actually me writing down the
3 notes as we speak here.

4 Mr. Rogerson, what was your occupation prior
5 to retirement?

6 A. I taught English in universities.

7 Q. How long did you teach English?

8 A. Thirty-seven years.

9 Q. And the last university where you taught
10 English?

11 A. Was Kansas State University in Manhattan,
12 Kansas.

13 Q. That is the hometown of my ancestors.

14 A. Is that right?

15 Q. That's right.

16 A. I meet all sorts of people, day in and day out,
17 who have some such connection.

18 Q. In fact, my mother actually went there when it
19 was called Manhattan College, I think.

20 A. Yes, true.

21 Q. She also was a teacher, an English teacher.

22 How long were you with KSU?

23 A. Twenty-seven years.

24 Q. That's a long time. How do you spend your time
25 now, Brewster?

1 A. Well, I have been collecting and studying and
2 writing about clematis for the length of time
3 since I retired in 1980 or '81, I forget which
4 year.

5 Q. So as I understand it, for the last 21 years,
6 you've pretty much devoted your time to the study
7 of clematis?

8 A. That is correct, yes.

9 Q. That's a substantial period of time. Would you
10 characterize this as a -- I'm not sure I would
11 characterize it as a hobby, would you?

12 A. Well, it began as a hobby. Then it became an
13 intellectual pursuit because I was intent on
14 learning as much about the genus as I could. And
15 in the process, I've collected what is now
16 regarded as one of the principal collections of
17 clematis in the Western Hemisphere.

18 Q. When you refer to collection, you're referring
19 to actual clematis plants?

20 A. That's true, yes. There are approximately 900
21 of them in my greenhouse, and that means about
22 540 distinct taxa. So it is one of the largest
23 collections anywhere in the world.

24 Q. 540 distinct taxa. When you use the term taxa,
25 are you referring to the species?

1 A. I'm referring to the names that botanists give
2 to the individual kinds of plants.

3 Q. I see. And what is the general format for these
4 names, if you would, please?

5 A. Well, it depends on whether they are species or
6 hybrids. If they are species, you write them in
7 italics; if they are hybrids, normally you would
8 write them in single quotes.

9 Q. Would the names of the plants, whether they're
10 species or hybrids, always be preceded by the
11 genus name?

12 A. That is a little hard to answer because there
13 are botanical complications involved.

14 Q. I see.

15 A. Let me suggest to you that two or three years
16 ago, for the first time, we had a clematis
17 register which was put out by the Royal
18 Horticultural Society in England. And in that,
19 there is an attempt to make an accurate account
20 of all the names, no matter what complications
21 are involved.

22 So you have there names that are written in
23 italics, names that are written in single quotes,
24 names that are written in small capitals, and
25 there may be some other arcane variations that

1 I'm not thinking of. But there's an attempt to
2 regularize the entire situation.

3 Q. You mentioned the Royal Horticultural Society.

4 A. Yes.

5 Q. They are located in the United Kingdom, correct?

6 A. That is correct; their home base is London or
7 Kew Gardens.

8 Q. I'm trying to get an understanding for the
9 acceptance of this registry by the Royal
10 Horticultural Society. I guess my question is,
11 is this organization recognized only in the UK or
12 is it recognized by clematis growers around the
13 globe?

14 A. I think the latter. The Royal Horticultural
15 Society has an immense reputation. It may not
16 have total authority in all the places where it
17 takes such authority, but it is widely recognized
18 as the principal such organization. And this
19 clematis register is now regarded as the basic
20 document for the naming of clematis.

21 Q. Is the register available in the United States
22 for review? Is it published?

23 A. Oh, yes, it is published, but it's published by
24 the British Society. And we have to order our
25 copies from there. I have a copy of it in front

1 of me. It is quite easily available if you want
2 to shell out the \$35 or so that it takes.

3 Q. And how did you obtain your copy, Mr. Rogerson?

4 A. Well, actually, mine is a complimentary copy
5 from the author.

6 Q. I see. Mr. Rogerson, you've been doing this for
7 21 years, and you've said it's become an
8 intellectual pursuit?

9 A. Just a moment. I said I have been collecting
10 since my retirement for 21 years. I've been
11 collecting clematis for 30 years and studying
12 them that length of time.

13 Q. Oh, I see. So you were actually interested in
14 this before your retirement.

15 A. I was a hobbyist before I retired.

16 Q. I see. Have you ever taken any formal education
17 in horticulture?

18 A. No.

19 Q. No formal classes.

20 A. No.

21 Q. Have you attended meetings of horticultural
22 organizations that deal specifically with
23 clematis?

24 A. Oh, yes, many of them.

25 Q. And have you amassed a collection of literature

1 on the subject as well?

2 A. Yes. Yes, I have. I have a very large clematis
3 library.

4 Q. And if you could for me, please, just generally
5 summarize what your library includes. I'm not
6 asking for a comprehensive list, but perhaps you
7 can identify or distinguish it based on books and
8 treatises and, you know, newspaper articles, that
9 type of thing.

10 A. Well, I've been collecting the literature of
11 clematis for almost the full time that I've been
12 interested in the plant. And that means that I
13 have a very considerable number of things which
14 are books, magazines, parts of journals,
15 offprints, magazine articles, wherever I find
16 anything on the subject.

17 Q. Sure.

18 A. But it's pretty difficult to particularize
19 beyond that, except to say that I have all of the
20 principal literature.

21 Q. And in the clematis field, those who are
22 interested particularly in that particular genus
23 of plants, is there -- I think you just mentioned
24 the Royal Horticultural Society Registry as one
25 principal publication?

1 A. Yes, it's a major publication.

2 Q. It's a major. Are there other publications that
3 you recognize that would be used by clematis
4 enthusiasts in this country as sources of
5 reference?

6 A. Well, the principal literature of clematis up
7 until about 15 years ago was almost entirely
8 centered in England. And the major books on the
9 subject up to about 1990 were all British. I
10 have all of those.

11 Those are the common possession of people in
12 this country who are interested in clematis: the
13 Jim Fisk books, Christopher Lloyd, Barry
14 Fretwell. Those are books that would be
15 instantly recognized by any clematis enthusiast
16 in this country or anywhere else in the world.

17 Q. Sure. I'd like to get back to your
18 qualifications and your experience dealing with
19 clematis. I think you indicated earlier that
20 you've attended a number of association or
21 organizational meetings involving clematis. Have
22 you authored any articles or books on the
23 subject?

24 A. I brought in this morning, so that I could show
25 it to our court reporter, a list of my

1 publications on clematis. There are 120 titles,
2 or thereabouts.

3 Q. All right. If we may, I'd like to have that --
4 Is this the original list?

5 A. The original list?

6 Q. That is, is this something that would you mind
7 if we marked it as an exhibit?

8 A. Oh, well, I think I would like to look at it for
9 typos first. But I will -- I will see to it that
10 you get it, if you like.

11 Q. Well, the typos are not significant for us. We
12 just would like to have a quick introduction as
13 an exhibit of a summary of the articles that
14 you've authored. And the typos we can overlook
15 for right now.

16 A. Yes. Yes, you can have that.

17 MR. KANE: Okay. Miss Johnson, would you
18 mind marking that as Walters Gardens Exhibit 40.

19 (Discussion off the record.)

20 (Exhibit WG 40 marked)

21 THE WITNESS: Let me make an observation
22 about the list. Are you there?

23 Q. (BY MR. KANE:) Yes, sir.

24 A. We haven't covered this particular point, which
25 may explain something about the list itself. For

1 a number of years, in fact for 20 years, I have
2 been a member of the International Clematis
3 Society; and for much of that time, a member of
4 its council or an officer. I attend most of the
5 international meetings of that group.

6 And one of the functions of that group is to
7 have together on one occasion lectures from
8 people interested in clematis: growers,
9 hobbyists, students. Some of those I have spoken
10 at, and occasionally I have delivered a paper
11 there.

12 Some of the other things on the list are
13 consequences of my being the president of the
14 Northwest Clematis -- Northwest Pacific Clematis
15 Society. I always get the name of it wrong.
16 It's the Pacific Northwest Clematis Society. I
17 am really sort of obliged to contribute an
18 article for every one of the newsletters, so
19 there are a number of things there that are
20 listed as PNCS.

21 Q. And the PNCS would be the Pacific Northwest
22 Clematis Society.

23 A. That is correct.

24 Q. All right. When you've been asked to make these
25 presentations, Mr. Rogerson, how far

1 geographically have you ranged?

2 A. From Tokyo to the Netherlands, not counting
3 Sweden.

4 Q. So there's a substantial amount of international
5 exposure there.

6 A. Yes.

7 Q. What about within the United States?

8 A. What about within the United States?

9 Q. Have you been asked to give presentations in the
10 United States other than through the Pacific
11 Northwest Clematis Society?

12 A. Yes. Not very often, but they have occurred.
13 This last year, I went to one of the principal
14 nurseries in this country, Chalk Hill in
15 California, to deliver a talk there, a slide
16 lecture. I do a lot of slide lecturing.

17 Q. Are they often associated with nurseries?

18 A. Yes.

19 Q. Okay. Would those slide lectures also include
20 perhaps garden clubs?

21 A. Yes, they do.

22 Q. Mr. Rogerson, have you ever been interviewed by
23 any news media on the subject of clematis?

24 A. Locally, three or four times, yes. And I have
25 appeared on, oh, I think four of the television

1 programs of Mike Darcy.

2 Q. Okay. Have you ever been interviewed by an
3 individual on behalf of National Public Radio?

4 A. Yes.

5 Q. I believe it was a Miss -- is it Ketzal?

6 A. Ketzal Levine? Yes, she did a piece on me some
7 time back.

8 Q. Yes. So I'm going to refer to the Ketzal Levine
9 interview. Did you ever have a chance to review
10 or listen to what she published on your
11 interview?

12 A. I'm not quite sure what that question means. I
13 did follow-up after she appeared on both the
14 radio and TV, just to see what was coming.

15 Q. Yes.

16 A. And I had --

17 Q. What I'm trying to do here, Brewster, is
18 determine -- I mean, you've indicated early on
19 that you have been recognized as having one of
20 the largest collection of clematis taxa in the
21 Western Hemisphere. You've been pursuing this
22 subject for some time, and have authored a
23 substantial number of papers on the matter and
24 have given presentations.

25 And I refer to the Ketzal Levine interview

1 particularly because I believe she's
2 characterized you as being the leading expert on
3 clematis taxa perhaps in the world.

4 A. Well, I think the world is pretty large. I
5 would consider myself to be among the dozen or so
6 people most likely to know the answer to clematis
7 questions.

8 Q. Okay, I'll accept that. And of the dozen
9 people, are there others in the United States
10 that may have the same qualifications as
11 yourself?

12 A. Well, qualifications in a field like this are
13 different. There are some people who are
14 formally educated in botany or horticulture and
15 look at the situation in a different way from
16 those of us who are essentially laymen with a lot
17 of knowledge from practical affairs. So it is
18 pretty difficult to answer that question.

19 Q. Okay. From a layman standpoint, can you
20 identify others that may fall in that category,
21 that have the same experience or depth of
22 knowledge as perhaps you do?

23 A. There are people who are certainly in the same
24 general class. I could name maybe four or five.
25 I would have qualifications to make about each

1 one, but nonetheless.

2 Q. Well, do you mind if we go through that
3 exercise?

4 A. I think I would rather not.

5 Q. All right. Would you consider perhaps
6 Mr. Maurice Horn as a person who is quite
7 knowledgeable about clematis?

8 A. Yes, indeed. He would be one that I would name
9 first off.

10 Q. Okay. Are you familiar with a gentleman by the
11 name of Chris or Christopher Hansen?

12 A. Christopher Hansen? There is a Hansen in
13 Denmark, but I don't think his first name is
14 Christopher. Where is this person?

15 Q. This gentleman is located in South Carolina,
16 connected with another nursery.

17 A. I do know his name, yes, but I have never met
18 him. I'm not familiar with his work.

19 Q. All right. And the gentleman down at Chalk Hill
20 Nursery?

21 A. Murray Rosen?

22 Q. Yes.

23 A. Yes, quite good.

24 Q. He's in the nursery. Is it a specialty nursery
25 or a more general nursery?

1 A. Well, he began in a more general context and has
2 now become the manager of what is a clematis
3 nursery.

4 Q. Okay. In your experience over the last 30, 31
5 years on this subject of clematis, have you had a
6 chance to formulate an opinion as to who would be
7 a general customer or consumer for purchasing
8 clematis?

9 A. Well, I'm not sure I understand the question.

10 Q. Well, I guess, is clematis a plant that would be
11 most likely purchased by the everyday gardener or
12 would it be someone who has a particular interest
13 in the subject?

14 A. Oh, I see. Well, the answer is a historical
15 answer. Clematis has had at least two periods of
16 great expansion, one of them in the 19th century,
17 the other currently going on. And the answer
18 changes over that period of time. There has been
19 times when clematis was primarily a hobbyist
20 plant.

21 What we're seeing nowadays, it has become
22 extremely popular, every year it advances in
23 popularity. And now it appears that a great many
24 people in the general gardening population are
25 paying much more attention to it than they ever

1 did before. That means a gigantic expansion in
2 the number of clematis that are actually being
3 sold in the world.

4 Q. Sure. Now, do you have or do you receive any
5 e-mails from folks in this category in the
6 relatively recent years that are asking you
7 questions via correspondence about particular
8 clematis?

9 A. Yes. I have a huge e-mail correspondence which
10 is peppered with questions about clematis. When
11 I belonged to AOL some years back, I started
12 doing a kind of round robin account of what was
13 going on in my collection, and I got many
14 questions related to that. I still receive
15 questions from the International Clematis Society
16 where I answer on behalf of the society. It is
17 quite a common activity.

18 Q. Okay. And in receiving this bulk of e-mail that
19 you get, you know, these number of e-mails, can
20 you characterize for me how many you receive from
21 people in the United States versus outside the
22 United States?

23 A. Well, the bulk that I receive now are from the
24 United States because we have a way of tracking
25 clematis questions from the United States to

1 people in the United States. And since I get the
2 more esoteric questions, I get them mostly from
3 the United States.

4 Q. Okay. Now I'd like to know, based on your
5 experience with that correspondence, how are the
6 plants, that is the taxa that the questions are
7 related to, how are they identified? Do they use
8 the formal genus species name or do they use the
9 hybrid name? Or how would you characterize how
10 the plants have been referenced in that
11 correspondence?

12 A. I think they run the gamut. We have people who
13 know the formal name, we have a great number of
14 people who don't know any name at all and they're
15 asking what the name is, and we have people who
16 haven't read up on the matter and use some name
17 that you have to struggle with in order to find
18 out what it is they're talking about. So I would
19 say there's quite a range of answers there.

20 Q. Okay. You mentioned that the hybrid names are
21 usually in single quotes.

22 A. Yes.

23 Q. Can you give us an idea of whether that form of
24 identification is used more or less than another
25 form?

1 A. Oh, that is the most common way people have of
2 referring to clematis. Most of them are still
3 not very well educated in what the species are or
4 how to talk about them. So principally, the
5 questions about large flowered hybrids or the
6 viticellas, and those most ordinarily have
7 cultivar names. The principal way of referring
8 to cultivar names by people who know anything is
9 the single quote.

10 There is an older one which you find
11 sometimes in print where the cultivars are listed
12 in boldface type. So you would occasionally find
13 that. But of course, people who are writing in
14 and asking questions by e-mail are not going to
15 use that.

16 Q. Sure, truly. Are you familiar with a particular
17 hybrid of clematis known as "py-loo"
18 (phonetically)?

19 A. Yes, except that I refuse to call it by that
20 pronunciation.

21 Q. How would you pronounce it?

22 A. 'Piilu'.

23 Q. Oh, with a long E sound.

24 A. Yes. That is the proper way of doing it.

25 Q. I'm sorry for my ignorance on the subject, since

1 I don't have the exposure that you do. I believe
2 it is -- I see that has been pronounced as
3 'Piilu', phonetically P-e-e-l-u.

4 A. Yes, correct.

5 Q. Okay.

6 A. Yes, I am familiar with it.

7 Q. It's spelled P-i-i-l-u; is that correct?

8 A. P-i-i-l-u. When it was first listed, it was
9 sometimes misspelled. And that, incidentally, is
10 one of the things you can find out from the
11 Clematis Register. I recommend, by the way, that
12 as you pursue this, you get a copy of that book,
13 because you will find 'Piilu' listed in there
14 with single quotes and no trademark.

15 Q. And does the existence of the single quotes, I
16 mean, that again identifies it as a particular
17 variety or hybrid, correct?

18 A. Yes, it indicates that it is a unique selection
19 with a name of its own.

20 Q. In your experience, when you hear or see that
21 name used in connection with clematis, what does
22 it connote to you? What comes to mind when you
23 see that name being used?

24 A. You mean the name 'Piilu'?

25 Q. Yes, sir.

1 A. Simply a hybrid produced by a man named Kivistik
2 in Estonia some many years ago.

3 Q. All right.

4 A. I have his catalog right here in front of me,
5 listing 'Piilu', P-i-i-l-u, as one of his
6 standard cultivars. I'm not sure it's
7 illustrated here, but it's certainly here in cold
8 print.

9 Q. And which catalog are you referring to?

10 A. His -- I don't know whether it's dated. His
11 standard European catalog, which I got a copy of
12 a number of years ago. Let's see.

13 I can't even read it, can you? It's very
14 tiny print.

15 THE REPORTER: There's a 1995, 235, 2000.

16 Q. Okay. This catalog came from Mr. Kivistik?

17 A. I think, yes, this was distributed in Cambridge
18 when I went to a meeting of the International
19 Clematis Society there. He was present, and he
20 gave out catalogs. And he brought a number of
21 his -- of his cultivars along with him.

22 Q. And this was a meeting that took place in
23 Cambridge --

24 A. Cambridge, England.

25 Q. England. Thank you. Do you remember what year

1 that took place?

2 A. No. It was in the late '90s, but I could easily
3 find out.

4 Q. That's fine, that's suitable. Do you believe it
5 was after 1997?

6 A. That would be about right, because I first
7 acquired the cultivar in 1997.

8 Q. And how did you acquire the cultivar?

9 A. Well, I've been trying very hard to remember and
10 I'm not quite sure. I do know, I have here a
11 catalog from Malcolm Oviatt-Ham, a British
12 grower, who didn't list it in '96 and did list it
13 in '97. And I find out that I myself acquired
14 the cultivar sometime between March and May of
15 1997. But I do not remember, and I cannot find,
16 the actual source of it.

17 Q. That's fine. Have you in the past been able to
18 order plant material from overseas for delivery
19 in the United States?

20 A. Oh, yes, for many years.

21 Q. And is it likely that in 1997, the plant
22 material of 'Piilu' was obtained in that way?

23 A. Yes.

24 Q. And when you acquired it, did you have some
25 special connection or is this available for the

1 public in the United States to obtain?

2 A. I think it was just being introduced at that
3 time. And it is true that at that time, the
4 nursery where I keep my plants, Gutmann Nurseries
5 out beyond North Plains, acquired an experimental
6 shipment of them to find out if they would be an
7 appropriate crop in the United States. And I
8 believe that that shipment came from Pride of
9 Place Plants.

10 Q. Okay. Are you familiar with a grower from
11 Holland by the name of J. Van Zoest?

12 A. Yes, I do know of that source.

13 Q. Have you ordered plant material from them in the
14 past?

15 A. No. It was very difficult to order from
16 Holland. And in fact, it was considered somewhat
17 unwise because the standard of hygiene was not
18 what we would prefer.

19 Q. I'm sorry, the hygiene?

20 A. Yes, the hygiene of the plants. Very often,
21 Dutch plants arrived in this country in miserable
22 condition, and it was because of the way in which
23 they had been handled on their own ground. So
24 for that reason, a number of us were quite leery
25 of ordering any plants from Holland.

1 Q. I see.

2 A. I didn't even consider it until just a few years
3 ago, when matters improved.

4 Q. Okay. You have mentioned that you're a member
5 of the International Clematis Society; is that
6 correct?

7 A. That is correct.

8 Q. Does the International Clematis Society issue or
9 publish a brochure or other literature?

10 A. It publishes a yearbook.

11 Q. Do you happen to know the name or title of the
12 yearbook?

13 A. Yes. It is on the Internet. "Clematis
14 International" is the name of the journal. And
15 it comes out once a year.

16 Q. All right. And what topics are covered in the
17 journal?

18 A. It is open to any significant topic related to
19 clematis.

20 Q. Okay. Do you know if the "Clematis
21 International" journal ever published information
22 concerning clematis 'Piilu'?

23 A. I don't know that particular matter.

24 Q. All right. Do you receive copies of the
25 "Clematis International"?

1 A. Yes.

2 Q. Do you know how many members of the
3 International Clematis Society are in the
4 United States?

5 A. Are in the United States?

6 Q. Yes.

7 A. Goodness. I don't know accurately. There would
8 probably be somewhere in the neighborhood of 40
9 to 50, but I would have to check that out.

10 Q. Sure. The members in the United States, that 40
11 or 50 that you just mentioned, how would you
12 characterize the makeup of the membership? That
13 is, are some of them hobbyists or are they
14 predominantly nurserymen or growers or the like?

15 A. Well, there would be some of both. But I think
16 it's probably true that most of them are
17 hobbyists or collectors. There are certainly
18 growers there, the brighter growers.

19 Q. Are you familiar with an author by the name of
20 Mary Toomey?

21 A. Oh, yes.

22 Q. And another author by the name of Everett Leeds?

23 A. Yes.

24 Q. L-e-e-d-s?

25 A. Correct.

1 Q. Have you had a chance to review a book authored
2 by those two entitled "An Illustrated
3 Encyclopedia of Clematis"?

4 A. I have reviewed the book.

5 Q. Do you have one in your library?

6 A. Oh, yes.

7 Q. Okay. Do you also obtain or receive copies of
8 catalogs from other growers in this country?

9 A. Yes.

10 Q. Are you familiar with a grower by the name of
11 Wayside Gardens?

12 A. Yes.

13 Q. And have you received their catalog on an annual
14 basis?

15 A. Yes.

16 Q. Do you have any idea how long you have received
17 that catalog?

18 A. Since about 1973.

19 Q. And do you keep copies of those catalogs?

20 A. Usually.

21 Q. Particularly if they contain something about
22 clematis.

23 A. Yes.

24 Q. Do you know if Wayside Gardens has been offering
25 for sale the 'Piilu' cultivar?

1 A. I don't remember that specifically. I think
2 it's quite likely, but I don't know.

3 Q. Okay. I think you mentioned a nursery or grower
4 close to where you keep your collection of
5 plants.

6 A. I mentioned the Gutmann Nurseries, which is
7 where I have the greenhouse that houses my
8 collection.

9 Q. Are they a wholesaler of plants?

10 A. Yes.

11 Q. Do they happen to wholesale clematis?

12 A. They used to have a fairly large line of
13 clematis. Bob retired from that about three
14 years ago and now has a very small collection,
15 delivering to a small number of regular
16 customers.

17 Q. Okay. Do you know if he ever handled the
18 'Piilu'?

19 A. Yes. It was offered for several years, I think.
20 I'm not perfectly certain.

21 Q. That's okay. And are there other growers in
22 your geographic area that grow and sell clematis?

23 A. Yes; there are two. One of them took over much
24 of Bob Gutmann's stock when Bob decided to pare
25 down the business. His name is Dave McCoy, and

1 he runs a nursery called McCoy Family Nurseries.
2 He is one of the two principal purveyors of
3 clematis in this area.

4 The other is -- is a family that I was just
5 talking about this morning, and I don't remember
6 their names. On the other side of Portland, out
7 in the country. They're at the Far West Show at
8 this very moment. But I can't remember the name
9 of their nursery.

10 Q. That's all right. Do you know if they have been
11 carrying or offering for sale clematis 'Piilu'?

12 A. I don't know.

13 Q. Okay. Do they publish catalogs?

14 A. I think they publish a list. Nowadays, all this
15 stuff is on the web, you know. Very frequently,
16 you don't get the mail order catalogs that you
17 used to because they're available on the web.

18 Q. Sure, it's less expensive that way.

19 A. Yeah. In fact, McCoy Nursery, for example, is
20 on the web.

21 Q. Okay. Are you familiar with a web site by the
22 name of GardenWeb?

23 A. Yes, I am.

24 Q. Do you access that web site from time to time?

25 A. No, I don't. Or very rarely when I'm pointed to

1 it by someone.

2 Q. Okay. Is there a particular web site available
3 that sort of caters to clematis?

4 A. I think probably Gardenbuddies is the one where
5 the actually knowledgeable clematis people
6 gather. GardenWeb is distinctly second rate in
7 that respect.

8 Q. I'm sorry, but I'll ask you to repeat the name
9 of the --

10 A. It's called Gardenbuddies, one word.

11 Q. Gardenbuddies.

12 A. M-hm.

13 Q. Have you accessed that web site before?

14 A. Yes, occasionally. I don't do that very much
15 because my time is so full, I cannot get involved
16 in general discussion of clematis day by day.

17 Q. Uh-huh.

18 A. The best thing to do, of course, is just stay
19 away.

20 Q. What would be the reason for you visiting these
21 web sites?

22 A. If someone were to suggest to me that I ought to
23 look at something on one of them.

24 Q. Okay. Do you ever use them in your research?

25 A. Not often. But it -- The Gardenbuddies is a

1 pleasant site, and I don't mean to talk it down.
2 It's simply that I don't have time to get
3 involved in discussions there.

4 Q. Sure. Well, it sounds like you've acquired
5 quite a bit of plant material in your day. When
6 you purchase clematis for your private
7 collection, how are the plants received by you?
8 Are they received by the mail in most cases?

9 A. In most cases, yes.

10 Q. Okay. And the plants, are they in a pot or are
11 they just root stock?

12 A. Well, that depends on the source. The ones from
13 abroad are almost inevitably going to be bare
14 root. Those from this country may or may not be
15 in plugs or in pots.

16 Q. And is the plant material often accompanied by a
17 label?

18 A. It had better be.

19 Q. What kind of information would you expect to
20 find on that label?

21 A. Of course, it varies. But occasionally, there
22 is very brief description of the flower.
23 Occasionally, more likely, I should say, often,
24 there is an indication of the pruning code. And
25 beyond that, it's hard to say because individual

1 nurseries vary so much.

2 Q. Sure. Would you expect to see the taxa, the
3 name of the plant?

4 A. Oh, yes, of course.

5 Q. And if there was a hybrid or a variety name for
6 that plant, would you expect that to be in the
7 traditional form of the nomenclature?

8 A. I would hope so, yes.

9 Q. That is "clematis" and then the use of single
10 quotes?

11 A. Yes. Or in some cases, there would be a species
12 name in front of the single quote.

13 Q. Okay. Now, here's a difficult -- perhaps a
14 difficult question, Brewster: Have you noticed
15 or seen a recent trend where growers have
16 indicated or claimed trademark rights?

17 A. Oh, yes, it's become common.

18 Q. It has become common.

19 A. Well, rather common. There are some particular
20 people who are involved, for the most part, in
21 producing these names. But it's become more and
22 more evident that it's going to happen in the
23 future.

24 Q. And what part of the name are they claiming
25 trademark rights in?

1 A. Well, usually, there are at least three
2 different systems that people are contending with
3 nowadays, so it's difficult to say. But I would
4 normally expect that they would be giving you
5 both a trademark and a cultivar name.

6 Q. Okay. Have you noticed instances where
7 individuals have claimed trademark rights in the
8 cultivar, the recognized cultivar name for a
9 hybrid or variety?

10 A. Yes. A particularly egregious one a little
11 while back, when someone had the effrontery to
12 try to trademark a clematis called 'Dawn',
13 D-a-w-n, which has been known as a standard
14 cultivar for many years. It was just outrageous.

15 Q. And do you have any basis for believing that
16 the 'Piilu' name is being trademarked?

17 A. Oh, it is obviously appearing in more than one
18 name in a number of lists.

19 Q. Okay. Do you know if "Piilu" is translated in
20 English or if it has another meaning in another
21 language?

22 A. "Piilu" does have a meaning which would be
23 different in English. And I've forgotten what it
24 is. Could it be "little" something or -- I just
25 don't remember that. But I'm pretty sure

1 that "Piilu" is translatable.

2 Q. Okay. Do you know what language "Piilu"
3 originated in?

4 A. "Piiilu" is Estonian.

5 Q. Okay. So if I were to say "little duckling,"
6 would that --

7 A. That might be it, yes.

8 Q. Okay. When a cultivar name has been
9 established, you mentioned the 'Dawn' reference.

10 A. Yes.

11 Q. Did you indicate that that was a recognized
12 cultivar for a number of years?

13 A. Yes.

14 Q. Okay. And someone has then tried to claim
15 trademark rights in it.

16 A. Yes. I think that happened about, oh, I don't
17 know, 18 months ago or something like that. And
18 I remember everyone clucking in disdain at the
19 time because it was so illegitimate.

20 Q. Are you familiar with a cultivar by the name of
21 'Blue Light'?

22 A. Yes.

23 Q. And what genus is that cultivar in?

24 A. You don't mean genus. The genus, of course, is
25 clematis.

1 Q. Okay, yeah. I was looking for whether you knew
2 if that was in the clematis genus or if it was in
3 perhaps another genus.

4 A. Oh, it's a clematis all right.

5 Q. Okay. Are you familiar with the variety
6 'Viola'?

7 A. Yes. I think that's --

8 Q. What type of plant is 'Viola'?

9 A. I think that is one of Kivistik's. It is what
10 we call a viticella, or the British would say
11 "vye-ti-sella" (phonetically), which means it
12 comes from a particular branch of the clematis
13 genus.

14 Q. Okay. And I'm going to ask the same question of
15 whether you recognize the name 'Kullus' or --
16 it's spelled K-u-l-l-u-s.

17 A. Yes, 'Kullus'. The difficulty is between
18 spelling it with a Y and a U. That also is a
19 Kivistik clematis, if I'm not mistaken. It's
20 probably in this catalog that I have right in
21 front of me.

22 Q. Okay. Without referencing the catalog, do you
23 recognize that name as a variety or hybrid name?

24 A. Yes, a hybrid.

25 Q. Okay. In your experience with others that you

1 collaborate with, would you have the opinion that
2 others would also recognize this as a hybrid
3 name?

4 A. Oh, yes.

5 Q. Okay. I'll ask the same question for 'Viola'.

6 A. Yes.

7 Q. Okay. And do you recognize the name 'Minister'?

8 A. Yes; I have the cultivar.

9 Q. Okay. And what type of plant is 'Minister'?

10 A. 'Minister' is what we call a Group 3 -- wait a
11 minute, it may be a Group 2. I'd have to look it
12 up. And I think it's pretty obviously a large
13 flowered hybrid.

14 Q. Is it also in the clematis genus?

15 A. Yes.

16 Q. Okay. I'm going to ask you if you recognize the
17 name 'Silmakavi', S-i-l-m-a-k-a-v-i?

18 A. Yes, that's another one of the same category.

19 Q. Also a clematis?

20 A. Yes.

21 Q. And it's a hybrid?

22 A. Yes.

23 Q. Okay. Another name I'm going to ask you to
24 recognize is -- I think it's pronounced
25 'Climador', C-l-i-m-a-d-o-r?

1 A. Oh, yes. Now, that's -- if I'm not mistaken,
2 that is applied on top of the original name of
3 the plant. This is from Manfred Westphal in
4 Germany. And the name of it, let's see. Blue
5 something. Oh, no. 'Konigskind'.

6 Q. Is 'Climador' a cultivar name?

7 A. I think -- yeah, I think that's now a cultivar
8 name. But it was only substituted for the first
9 name.

10 Q. Okay.

11 A. This is one that could possibly be trademarked,
12 I don't know. I can't remember. But that is one
13 of the problems with this whole matter, that you
14 now have two or three names to try to juggle.

15 Q. But the end result, would you agree with me,
16 that regardless of whether it's trademarked or
17 not, if you were to use any one of the
18 variations, let's say if there were three names
19 assigned for a particular plant, the use of any
20 one of those names would make a specific
21 reference to a particular taxa of plant.

22 A. Yes, that's true.

23 Q. So in essence, whether it has a trademark
24 designation or not, I mean, it really is intended
25 to refer to a very specific genetic pool of

1 material or plant material having very unique
2 characteristics.

3 A. Yes, it's all intended to refer to one
4 particular result of breeding.

5 Q. Okay. In your experience, is there any cultivar
6 or hybrid name that when you hear it or see it,
7 that you automatically think of that plant as
8 coming from a particular source?

9 A. I'm afraid I can't answer that question because
10 I -- I can see alternative meanings for it.

11 Q. Okay. But when you do see it, do you think of a
12 specific plant?

13 A. When I see what?

14 Q. When you see the cultivar name.

15 A. Oh, yes. The problem now is simply trying to
16 remember whether what you saw was a trademarked
17 name or a cultivar name.

18 Q. But in any event, whether it is a cultivar name
19 or a trademarked name, does it invoke the same
20 image for you that is a specific plant?

21 A. Yes. Yes, if you had both of those names in
22 front of you, you would see that they refer to
23 the same plant.

24 Q. Yes. And if you saw them separate from each
25 other, would you also think of the same plant?

1 A. That would depend on your memory, which in some
2 cases is not exactly infallible.

3 Q. I'd agree.

4 A. It is beginning to be very complicated because
5 you can't carry all those names around in your
6 head.

7 Q. Sure. Brewster, in your 31 years, have you
8 tried to develop new cultivars yourself?

9 A. I haven't tried. Occasionally, I've done it
10 without trying.

11 Q. Would you please elucidate on that.

12 A. Well, in a large collection, you have seedlings
13 that pop up whether you want them to or not. And
14 every now and then, one of them turns out to be
15 quite a successful clematis.

16 Q. Oh, I see. And do you happen to have any
17 cultivars named after you?

18 A. Yes, yes. There's one that popped up. It is a
19 montana, which I didn't name 'Brewster' but
20 somebody else did, and it is now registered.

21 Q. Did it come from your plant stock?

22 A. Yes.

23 Q. Okay.

24 A. It was volunteer --

25 Q. Let's talk about the registration process, if we

1 can. Are you familiar with how cultivars are
2 registered?

3 A. Oh, yes.

4 Q. Is the name typically registered by the breeder?

5 A. More often than not, it would be registered by
6 the breeder, yes, because he wants to have it on
7 record.

8 Q. Sure.

9 A. Many, many people have ignored the whole idea of
10 registration ever since the big vogue started in
11 the middle of the 19th century. They just didn't
12 know that there was such a thing as registering
13 plants. And very often, they didn't keep records
14 of the breeds. But in recent years, it has
15 become more important to have the plant staked
16 down in the sense that people know where it came
17 from. And that is the point of the registry.
18 And more and more people now are attending to it.

19 Q. Sure. I mean, the purpose is to make sure that
20 they have consistent plant material identified by
21 the same name; is that correct?

22 A. That's right.

23 Q. Are you familiar with an association by the name
24 of the International Cultivar Registration
25 Authority?

1 A. Yes, I do know of it.

2 Q. And do you know who manages the International
3 Cultivar Registration Authorities?

4 A. No, I don't. There have been various attempts
5 at centralizing the entire matter. I'm not sure
6 what the current state of that is. But I know
7 that every now and then, there has been an
8 attempt that didn't work.

9 Q. Sure. Do you know if there's an International
10 Cultivar Registration Authority for clematis?

11 A. That would be the one that I spoke of, which
12 produced "The International Clematis Registry and
13 Checklist."

14 Q. That's the Royal Horticultural Society.

15 A. That's right.

16 Q. Are different horticultural societies
17 responsible for -- have been designated as the
18 international cultivar registration authorities
19 for different genres?

20 A. I'm not quite sure how that question came out,
21 but let me answer it this way. A number of years
22 ago, I tried to find out what was the
23 registration authority for clematis in this
24 country. And I wrote the Arnold Library and
25 Museum at Harvard. And I received the

1 information that as far as they knew, which is
2 very comforting, they were the registrar for
3 woody plants in the United States.

4 Turned out that this was totally mistaken.
5 We didn't have a registration authority. And
6 that, unfortunately, is likely to be the
7 situation as you go out from one genus to
8 another. It is still not a clear track.

9 Q. Sure, okay. But if I were a layperson wanting
10 to find a particular cultivar or whether it had
11 been registered, and let's just -- I guess we've
12 already said if it was clematis, how would I know
13 to look at the Royal Horticultural Society?

14 A. Well, if you're smart in the first place, you
15 would look it up on Google.

16 Q. Oh, the Internet has really complicated matters,
17 hasn't it.

18 A. Yes.

19 Q. Before the Internet came about, how would you
20 have looked it up back before the Internet
21 happened in what, late 1980s?

22 A. The only resource that we had that was anything
23 like dependable was the clematis list produced by
24 Jim Fisk out of his nursery in England. There
25 were comparatively few lists of clematis that had

1 the authority of that one. And that was simply
2 because he was a very good exporter and he knew
3 his work. He was an authority in the field. And
4 people simply went by what his list showed them.

5 There were other lists with varying degrees
6 of dependability. But that was where we looked
7 if we wanted to find the answer. And if the
8 clematis wasn't in Jim Fisk's repertoire, we
9 didn't know the answer.

10 Q. I see. So in summary, I mean, we've looked at
11 the entire picture here of horticulture in the
12 United States. There really is an international
13 cooperation in the naming of plants, apparently.

14 A. Yes. Well, a number of years ago, there was an
15 organization formed to try to stabilize the whole
16 convention of naming. And out of that came
17 the Code of Nomenclature, the International Code
18 of Nomenclature. That is something we haven't
19 mentioned. It's not directly related to the
20 affairs of business in the horticultural world,
21 but that is where the rules come from. The rules
22 for example that underlaid the International
23 Clematis Registry that I've been speaking of.

24 Q. So that document is recognized in this country
25 by nurserymen and other plant enthusiasts.

1 A. Yes, it has to be recognized, even though it is
2 in many cases downright obscure and often
3 ungrammatical. Even though it has faults, it is
4 the one document that people really feel they
5 must attend to. And so you find it observed
6 throughout the world because we have nothing
7 better.

8 Q. I see. Well, I believe I have asked all the
9 questions that I had in mind, Brewster. And I
10 appreciate your time this morning. Yes, it is
11 this morning.

12 A. It still is, yes.

13 Q. There is actually one other matter that's come
14 to mind. Are you familiar with a gentleman by
15 the name of Rick Sorenson?

16 A. Yes.

17 Q. And how do you know of Mr. Sorenson?

18 A. Well, I'm not quite sure where we first met. I
19 have actually spoken to him on one occasion when
20 he came down to Portland. He has been sending me
21 the very elaborate pictures in the ads from Pride
22 of Place Plants. He was most appreciative when I
23 wrote up a rather glowing account for 'Blue
24 Light' a number of months ago, and has in fact
25 commended me for that in print on the web. So we

1 have an outwardly very satisfactory relationship.

2 Q. Do you know if Mr. Sorenson and Pride of Place
3 Plants is one of those organizations that is
4 claiming trademark rights in plant cultivar
5 names?

6 A. Of course.

7 Q. And do you have an opinion on his attempts to do
8 this, to claim trademark rights in plant cultivar
9 names?

10 A. Well, I have a recent communication from him
11 which points out something that I didn't know and
12 am very dubious about, which is that a U.S.
13 trademark may be bestowed on anyone who asks for
14 it first, which seems a strange principle, sort
15 of ignoring the ethics of the situation.

16 My own view of it is that he appears to be
17 entitled to that legally. And I think of him as
18 basically a man of goodwill. On the other hand,
19 I do consider him to be a middle man who has no
20 observable right to interpose himself in the
21 situation. But that is not for me to say.

22 Q. That's fair enough. Have you had a chance to
23 look at Mr. Sorenson's literature for Pride of
24 Place Plants?

25 A. Oh, yes. I receive it regularly.

1 Q. In his literature, does he identify a number of
2 plant or equipment as cultivars?

3 A. Yes. His situation was that he discovered a
4 number of years ago that there were excellent
5 plants from Fretwell and Kivistik and possibly
6 Westphal as well that were not protected in this
7 country. And he apparently wrote to those
8 persons and said, "Look, I can get you a better
9 deal if we trademark the plants." They
10 apparently liked this, and that is the reason why
11 he has this large collection, this continuing
12 collection of new plants.

13 Q. Were these plants that were available from
14 Fretwell and Kivistik and the other -- the German
15 location?

16 A. Westphal, yes.

17 Q. Do you know if these cultivars were available
18 from other nurseries in this country prior to
19 Mr. Sorenson's affiliation?

20 A. I don't know whether they were available from
21 other nurseries in this country. I know they
22 were available at large in Europe. It is quite
23 possible that they were available in Canada, I
24 don't know.

25 Q. Did you have in your collection any of the

1 cultivars that Mr. Sorenson was promoting prior
2 to Mr. Sorenson's marketing of those cultivars?

3 A. Well, I don't know the precise dates of any of
4 them.

5 Q. Okay.

6 A. But I do have virtually everything that he now
7 offers.

8 Q. I see.

9 A. And incidentally, I did not get them from him.

10 Q. This is probably a tall order to ask if you
11 recall where you obtained them.

12 A. Well, I order from so many places that I am
13 simply unable to answer the question.

14 Q. That's okay. I knew it was a tall order here.

15 Are you familiar with a gentleman by the name
16 of John Howells?

17 A. Oh, yes.

18 Q. And how do you know Mr. Howells?

19 A. Well, John Howells and I were among the founders
20 of the International Clematis Society. I have
21 known him for many years. In fact, I'm sure I
22 know when I first met him, it would have been in
23 1984. And we've had a correspondence back and
24 forth, and met on two or three occasions.

25 Q. Okay. Do you know if Mr. Howells has ever

1 published a book?

2 A. He's published at least three.

3 Q. And is Mr. Howells in the United States?

4 A. No, he lives in England.

5 Q. Okay. Are you familiar with a book that he
6 authored by the name of "Choosing Your Clematis"?

7 A. Yes.

8 Q. Do you own a copy of the book?

9 A. Yes.

10 Q. Do you recall approximately when you obtained
11 it?

12 A. I obtained it in the year in which it was
13 published, but I'm not sure when that was.

14 Q. Okay. Do you know if the book is available in
15 libraries in this country?

16 A. I can't truly say that I do, but I can't believe
17 that there aren't some that carry it.

18 Q. Sure. Are you familiar with a gentlemen by the
19 name of Guido Tooveere?

20 A. Oh, yes.

21 Q. G-u-i-d-o T-o-o-v-e-e-r-e?

22 A. Yes; I've sent you his catalog.

23 Q. Yes. And do you recall when you obtained his
24 catalog?

25 A. No. It was sent to me by a friend because I

- 1 asked for it. It's very, very difficult to get.
- 2 Q. Okay. And Mr. Tooveere, is he an Estonian?
- 3 A. He's an Estonian grower.
- 4 Q. Okay.
- 5 A. He's now dead, unfortunately.
- 6 Q. And do you know if Mr. Tooveere published any
- 7 literature on 'Piilu'?
- 8 A. 'Piilu' is listed in his catalog, in both
- 9 Estonian and English.
- 10 Q. So presumably, since it's in English, it --
- 11 Strike the question. It would have led to an
- 12 objection somewhere.
- 13 A. Don't you have that catalog, by the way?
- 14 Q. Yes, sir, I do. And I sent it back to you by
- 15 first class postage.
- 16 A. All right, fine.
- 17 Q. You'll receive it.
- 18 A. Thank you.
- 19 Q. I took some color copies of it. So thank you
- 20 very much.
- 21 You said it's difficult to obtain the
- 22 Tooveere publication.
- 23 A. Well, anything from behind the Iron Curtain was
- 24 difficult to obtain.
- 25 Q. Can you explain to me just how elaborate, you

1 know, what steps you took to obtain a copy?

2 A. I'm sorry?

3 Q. Can you explain for me what steps you took to
4 obtain a copy?

5 A. What steps I took?

6 Q. Yes. How did you obtain your copy?

7 A. Let me see. I'm sure I must have asked one of
8 my European friends if he could get me a copy.

9 Q. Uh-huh.

10 A. But I can't remember which one.

11 Q. Okay. Do you know if Mary Toomey would have had
12 a copy?

13 A. I can't say, but I think it's fairly probable
14 that she does.

15 Q. Actually, I have her book in front of me here,
16 "The Illustrated Encyclopedia of Clematis."

17 A. Yes.

18 Q. And indeed, she does make reference to that in
19 the back of her text as a reference for clematis.

20 A. Yes; and I presume she had one.

21 Q. Brewster, I think that that concludes my
22 questioning for this morning.

23 A. Very good.

24 Q. Did I ask any questions that you wish to
25 elaborate on at this point?

1 A. No, I can't think of any.

2 Q. Are there any answers that you gave that you
3 wish to clarify at all?

4 A. Not unless you found them obscure.

5 Q. No, I'm quite satisfied with your answers, very
6 much so. And I thank you for your time.

7 A. You're welcome.

8 Q. There is the list of publications that you have
9 that we have marked as an exhibit. I'd like to
10 have you leave that with Miss Johnson.

11 A. It's in front of her now.

12 Q. And what will happen is that she will forward to
13 you a copy of the transcript for your testimony,
14 and she will ask you to review it to see if
15 there's any answers that you wish to correct.
16 And you can do that on an errata sheet at the
17 back of the deposition.

18 A. All right.

19 MR. KANE: And I hope that she will be able
20 to get that to you within the next week.

21 THE REPORTER: Yes, I will.

22

23 (DEPOSITION CONCLUDED AT 10:30 A.M.)

24

25

1 (N.B.: As a matter of firm policy, the
2 stenographic notes of this transcript will be
3 destroyed five years from the date appearing
4 on the following certificate, unless notice
5 is received otherwise from any party or
6 counsel thereto on or before said date of the
7 27th day of August, 2009.)
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C E R T I F I C A T E

I, Deelana Johnson, Certified Shorthand Reporter, do hereby certify that BREWSTER ROGERSON personally appeared before me on August 27, 2004, 9:10 a.m., at 3009 N.W. Overlook Dr., Hillsboro, Oregon; that I was not disqualified under Rule 28 of the FRCP; that the witness was by me first duly sworn on oath, and examined upon oral interrogatories propounded by counsel, counsel for the Applicant not being present; that said proceedings were taken down by me in stenotype and thereafter reduced to typewriting; and that the foregoing transcript, Pages 1 to 54, both inclusive, constitutes a full, true and accurate record of said examination of and testimony given by said witness, and of all other proceedings had during the taking of said deposition, and of the whole thereof, to the best of my ability.

Witness my hand at Portland, Oregon, this
27th day of August, 2004.



Deelana Johnson
Deelana Johnson
CSR No. 90-0104

CORRECTION SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
11	24	Since Registry is capitalized, I see I was unable to make the point that the publication is called the <u>International Clematis Register</u> , not <u>Registry</u> . (as on p. 43)
12	15	Clematis enthusiast
14	10	spoken at
	18	for which, read so
19	19	for is read was
22	5	for are read or
	24	"peer" sounds wrong. Could I have said "proper"?

I hereby certify that I have read the foregoing deposition, and that the transcription together with any corrections noted, is a true and accurate record of my testimony given at the time and place noted.

Bonster Rogers 8/31/04
Witness' Name Date

Subscribed and sworn before me this _____ day of _____, 2001.

Notary Public For:

My commission expires:

CORRECTION SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
23	11	Clematis Register (title)
32	18	for get read stay
35	23	for than read in
36	19	for legitimate read illegitimate!
37	11	vye-ti-sella
41	2	for it's read is
45	24	that document <see final note>
47	12	read "that a U.S."
50	17	that carry it.

I hereby certify that I have read the foregoing deposition, and that the transcription together with any corrections noted, is a true and accurate record of my testimony given at the time and place noted.

Brenter Rogers 8/31/01
 Witness' Name Date

Subscribed and sworn before me this _____ day of _____, 2001.

Notary Public For: _____
 Commission expires: _____

CORRECTION SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
45	24	I do not know if this can be clarified, but I would like it understood that when Mr. Kane said "that document" I took him to mean the <u>International Code of Nomenclature</u> , and my following remarks were in reference to that publication, NOT the <u>Clematis Register</u> .

I hereby certify that I have read the foregoing deposition, and that the transcription together with any corrections noted, is a true and accurate record of my testimony given at the time and place noted.

Brenton Rogers 8/31/01
Witness' Name Date

Subscribed and sworn before me this _____ day of _____, 2001.

Notary Public For:

My commission expires:

PUBLICATIONS ON CLEMATIS by BREWSTER ROGERSON

"Buying a Clematis," *The American Horticulturist*, April-May 1980, pp. 29-33.

"A Clematis Calen 1 dar," *The Avant Gardener*, Vol. 15, No.10, August 1983 (a "Guest Special Issue" by Pamela Harper and BR)

"*Clematis viticella* and its Progeny," *Pacific Horticulture*, Spring 1985, pp. 40-44

"Tiny Flowers Make Big Hit," *San Jose Mercury*, February 14, 1985 [abbreviated version of the preceding].

Review of Fisk, Fretwell, Lloyd on Clematis, *Pacific Horticulture*, Spring 1990, pp. 8-9.

"A Collection in Containers," *Clematis International*, 1992, pp. 48-52.

"Visitors from Japan," *Bulletin of the Hardy Plant Society of Oregon*, Fall 1992.

"Some New Clematis to Look For," *Bulletin of the Hardy Plant Society of Oregon*, 1995.

"A Visit from New Zealand's Alister Keay," *Bulletin of the Hardy Plant Society of Oregon*, 1996.

"Pruning Clematis Pays Later in Flowers," *The Oregonian*, July 31, 1997.

"First Steps with a Clematis," posted in the Gardening Libraries of AOL and Compuserve, 1997, and as "Planting Clematis" on the Website of the I.C.I.S., 1998.

"The U.S. Clematis Trade: A Brief Account," *Clematis International*, 1998, pp. 49-53.

"Pruning Young Clematis," Dear Professor Sage, *East Coast Gardener*, Sept-Oct 1998, p. 12.

"Books on Clematis," *Patowmack Papers*, I (No. 6, 1998) , II, (No. 1, 1999). Reprinted with minor revision in *Bulletin of the Hardy Plant Society of Oregon*, 1999

"*C. texensis* Buckl.," *The Clematis 1998*, British Clematis Society, pp. 112 (photograph), 117 text.

"Yet More Books on Clematis," *Bulletin of the Hardy Plant Society of Oregon*,

"Plant Profile: Clematis 'Minuet,' *PNCS Newsletter*, Winter 1999, pp. 3-4.

"Plant Profile: Clematis 'Durandii,'" *PNCS Newsletter*, July 2000, pp. 6-8.

"Plant Profile: *Clematis crispa*," *PNCS Newsletter*, September 2000, pp. 8-9.

"Notes on Growing Clematis from Seed," *PNCS Newsletter*, November 2000, pp. 4-5.

Review of Gubbins (Bridget), *Growing Clematis: A Complete Guide*, *Clematis International 2000*, pp. 101-02.

"C. 'Red Pearl,'" *Clematis International 2000*, pp. 55-56 [reprinted from Clematis of the Month, Sept, 1998].

Review: "Clematis the Genus, Grey-Wilson (Christopher)," *PNCS Newsletter*, March 2001, pp. 4-5.

"Clematis in Partial Shade," *PNCS Newsletter*, M

"Studying an Unknown Clematis from China," *Clematis International* 2001, pp. 75-82.

"On the Forthcoming *Clematis Register*," *PNCS Newsletter*, May 2001, pp. 5-6.

"More Clematis on the Internet," *PNCS Newsletter*, May 2001, p. 6.

"Time Passes at the Greenhouse," *PNCS Newsletter*, July 2001, pp. 4-5.

Plant Profile: "Fragrant Tube Clematis?" *PNCS Newsletter*, January 2001, pp. 4-5 [adapted from an instalment of Clematis of the Month on the I.C.S. Website]

"Saying their Names," *PNCS Newsletter*, Spring 2002, pp. 8-11.

"Clematis at Troutbeck'—A Whiff of the Past," *PNCS Newsletter*, April 2002, pp. 3-4.

"More Clematis on the Web," *PNCS Newsletter*, April 2002, p. 5.

"Plant Profile: Clematis 'Moonlight,'" *PNCS Newsletter*, July 2002, pp. 6-7.

"In Memory of Magnus Johnson," *PNCS Newsletter*, July 2002, pp.

"Scents and Non-scents," *Clematis International* 2002, pp. 138-139.

"Not All Clematis are Clinging-Vines," *Bulletin of the Hardy Plant Society of Oregon*, 18:2 (Fall 2002), 19-22.

"Time for cirrhosas," *PNCS Newsletter*, January 2003, pp.

"A Favorite Ten for Containers," *PNCS Newsletter*, August 2003, pp. 3-5. "News of the Rogerson Collection," pp. 8-10.

"News of the Collection," *PNCS Newsletter*, October 2003, p. 6.

"Clematis cirrhosa," *Journal of the Ranunculaceæ Society*, January 2004.

"Clematis of the Month," 1997–, series in progress on the Website of the International Clematis Society <<http://clematisinternational.com/clematis>>. Photographs usually by Ken Woolfenden, text by BR except as noted:

1997

May: *C. 'Asao'*

June: 'Countess of Lovelace'

July: *C. patens*

August: 'Hanajima'

September: 'Perle d'Azur'

October: 'Etoile Violette'
November: *C. x jouiniana*
December: *C. cirrhosa*

1998

January: 'Sieboldiana'
February: *C. armandii*
March: *C. alpina*
April: 'Broughton Star'
May: 'Bees' Jubilee'
June: 'Fair Rosamond'
July: 'Romantika'
August: 'Huldine'
September: 'Red Pearl'
October: 'Bill Mackenzie'
November: *C. terniflora*
December: 'Jingle Bells'

1999

January: 'Warszawska Nike'
February: 'Jan Lindmark'
March: 'Columella'
April: *montana* 'Rubens'
May: 'Barbara Jackman'
June: 'Teshio'
July: 'Paul Farges'
August: 'Minuet'
September: *C. viorna*
October: *C. rehderiana*
November: 'Snow Queen'
December: *C. heracleifolia*

2000

January: PISTACHIO
February: 'Comtesse de Bouchaud'
March: 'Georg'
April: *C. spooneri*
June: 'Durandii'
July: 'Königskind'
August: 'Prins Hendrik'
September: 'Kardynal Wyszinski'
October: 'Mrs. Robert Brydon'
November: 'Betty Corning'
December: 'H.F. Young'

2001

January: *C. fasciculiflora*
February: 'Prince Charles'
March: *C. chiisanensis*
April: 'Guernsey Cream'
May: 'Nelly Moser'
June: *C. coactilis*
July: 'Mrs. Cholmondeley'
August: 'Blue Boy'
September: 'Kermesina'
October: *C. forsteri*
November: *C. serratifolia*
December: 'Ernest Markham'

2002

January: *C. napaulensis*
February: 'Jacqueline du Pré'
March: 'Pleniflora'
April: BLUE LIGHT
May: 'Fairy Queen'
June: *C. intricata* 'Harry Smith'
July: 'Madame Julia Correvon'
August: *C. stans*
September: 'Gipsy Queen'
October: 'Alba Luxurians'
November: 'Gravetye Beauty'
December: *C. ranunculoides*

2003

68 January: 'The Bride'
69 February: *C. aristata*
70 March: *C. fauriei* x *C. sibirica* F2
71 April: 'Kakio'
72 May: 'John Warren'
73 June: 'Kosmicheskaya Melodiya'
74 July: 'Victoria'
75 August: 'Arabella'
76 September: 'Rüütel'
77 October: 'Pamiat Serdtsa'
78 November: *C. recta*
79 December: *C. x triternata* 'Rubromarginata'

2004

80 January: 'Ville de Lyon'
81 February: 'Tsuzuki'
82 March: *koreana* var. *lutea*

83 April: 'Lady Caroline Nevill'

84 May: 'Elsa Späth'

85 June: 'Candida'

86 July: 'Luther Burbank'

87 August: 'Julka'

Slide lectures and workshops for nurseries and garden groups.

Unpublished talks for I.Cl.S. conferences:

"In quest of *Clematis texensis*" (I.Cl.S. Annual meeting, London, 1989).

"American Hybrid Clematis," (I.Cl.S. Annual meeting, Leiden, Nov. 1991).

"The American Leather Flowers," (I.Cl.S. Annual meeting, Japan, May 1997).